

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

THOMAS R. AUSTIN,

Petitioner,

ORDER

v.

09-cv-0380-bbc

JODINE DEPPISCH, Warden,
Fox Lake Correctional Institution,

Respondent.

Thomas Austin, an inmate at the Fox Lake Correctional Institution, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the five dollar filing fee. The petition is before the court for preliminary review pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

The subject of the petition is petitioner's 2002 conviction in the Circuit Court for Walworth County of operating a motor vehicle while intoxicated. In 2006, petitioner filed a federal habeas petition attacking this same conviction. Austin v. Warden, Dodge Correctional Institution, 06-C-530-S. On November 13, 2006, Judge John Shabaz entered an order dismissing the petition with prejudice on the ground that it was untimely.

Under 28 U.S.C. § 2244(a)(3)(A), a petitioner may not file a second or successive application for habeas corpus under § 2254 unless he first obtains authorization from the

appropriate court of appeals. Petitioner has not obtained such authorization. Accordingly, the petition must be dismissed.

ORDER

IT IS ORDERED that the successive petition of Thomas Austin for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DISMISSED for petitioner's failure to obtain authorization from the court of appeals as required by 28 U.S.C. § 2244(a)(3)(A).

Entered this 23rd day of June, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge